

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H3

[REDACTED]

FILE:

[REDACTED]

Office: VIENNA, AUSTRIA

Date: **SEP 02 2004**

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

Page 2

DISCUSSION: The waiver application was denied by the Officer in Charge, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who was found by a consular officer to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife and stepchildren.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *Decision of the Officer in Charge*, dated February 3, 2004.

On appeal, counsel asserts that Citizenship and Immigration Services based its denial of the waiver application on an unwarranted assumption about the living situation of the applicant's spouse. Counsel indicates that the applicant's spouse does not reside with her parents and her parents are unable to assist her in caring for her children. *Form I-290B*, dated March 3, 2004.

In support of these assertions, counsel submits a brief, dated April 2, 2004; copies of letters from the applicant's stepchildren; a copy of a lease signed by the applicant's spouse on March 20, 2004; an affidavit of the parents of the applicant's spouse, dated April 2, 2004; copies of hospital documents relating to a surgery undergone by the father of the applicant's spouse in Romania and a letter from a psychologist, dated April 1, 2004. The entire record was reviewed and considered in rendering a decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the

Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States on November 24, 1999 on a valid C1/D visa to join the Discovery Sun cruise ship. The applicant signed off of the ship and entered the United States without inspection in May 2000. The applicant, therefore, accrued unlawful presence from the date of his entry without inspection until the date he departed from the country in 2003. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to Romania in order to remain with the applicant. Counsel indicates that the applicant's wife and stepchildren "could not move to Romania because they are used to a totally different lifestyle and language will also be a barrier." *Brief in Support of Appeal*, dated April 2, 2004. The AAO notes that the inconveniences of relocation standing alone do not warrant a finding of extreme hardship. Counsel, however, further contends that the parents and other important family members of the applicant's wife reside in the United States and that the inadequate level of medical care, educational programs and economic factors in Romania prevent her relocation. Counsel provides generalized country condition reports and a copy of the 2002 *World Factbook* excerpt on Romania to support his contentions regarding conditions in Romania. The AAO notes that these reports standing alone do not evidence how "economic factors" in Romania would impose an extreme hardship on the applicant's spouse.

Counsel does not establish extreme hardship to the applicant's wife if she remains in the United States in order to maintain her close familial relationships, employment and access to adequate educational programs for her children. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel submits a letter from a psychologist to support the assertion that the applicant's spouse suffers emotionally as a result of

separation from the applicant. *Letter from Ann Bradley, MSW*, dated April 1, 2004. The letter states that the applicant's spouse suffers symptoms of depressed mood as a result of separation from her husband. *Id.* The letter further states that the applicant's spouse is "overwhelmed with meeting the parenting needs of her two children, finding no time for her own care." *Id.* The record establishes that the applicant provided care for his stepchildren during his residence in the United States while the applicant worked. *Brief in Support of Appeal.* The AAO notes that the applicant and his spouse were married in 2001. The record fails to establish that the applicant's spouse was unable to handle the "parenting needs of her two children" prior to the introduction of the applicant into their lives. Further, the AAO notes that the record fails to establish a continuing relationship between the applicant's spouse and a mental health professional. The submitted letter from a psychologist was based on a one-day evaluation and fails to evidence further treatment or medication prescribed to the applicant's spouse as a result of her symptoms and, therefore, fails to establish a condition rising to the level of extreme.

The AAO finds that the OIC erred in stating that the applicant's spouse resides with her children and her parents. *Decision of the OIC.* On appeal, counsel provides a copy of a lease agreement evidencing that the applicant's spouse and children do not reside with the applicant's parents. The AAO acknowledges receipt of information from counsel seeking to establish that the parents of the applicant's spouse are unable to financially support their daughter. *Brief in Support of Appeal.* The AAO finds, however, that this situation does not rise to the level of extreme hardship as the record establishes that the applicant's spouse earns an income on which to support herself and her children.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife endures hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.